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SOCIAL AND HUMAN RIGHTS QUESTIONS

HUMAN RIGHTS

Note by the secretariat

1. In it resolution 2002/19, the Sub-Commission on the Promotion and Protection of Human Rights invited Mr Miguel Alfonso Martínez, Special Rapporteur of the Sub-Commission on the study on treaties, agreements and constructive arrangements between States and indigenous populations, to prepare a short working paper identifying the themes and possible outputs of a seminar on treaties for possible consideration by the Commission on Human Rights at its fifty-ninth session.

2. For several reasons, it was not possible for the Special Rapporteur to submit the requested short working paper to the Commission at its fifty-ninth session. Notwithstanding, on 25 April 2003, the Commission adopted decision 2003/117 in which it decided to recommend to the Economic and Social Council that it request the United Nations High Commissioner for Human Rights to organize, before the end of the International Decade of the World's Indigenous People, a seminar on treaties, agreements and other constructive arrangements between States and indigenous peoples to explore possible ways and means to follow up on the recommendations included in the final report of the Special Rapporteur (E/CN.4/Sub.2/1999/20).

3. Information in relation to the seminar provided by the Special Rapporteur is contained in the annex to the present document.

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Annex

WORKING PAPER PREPARED BY THE SPECIAL RAPPORTEUR OF THE THE SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE STUDY ON TREATIES, AGREEMENTS AND CONSTRUCTIVE ARRANGEMENTS BETWEEN STATES AND INDIGENOUS POPULATIONS[a]

1. The Special Rapporteur welcomes the opportunity to provide the Economic and Social Council with suggestions in connection with the proposed seminar on treaties, agreements and constructive arrangements between States and indigenous peoples. In his final report on the study (E/CN.4/Sub.2/1999/20), submitted to the Sub-Commission in 1999, he made a number of recommendations for follow-up.

2. In paragraphs 315 and 316, he recommended that a United Nations-sponsored workshop be convened to open an educated discussion on the possible merits and demerits of the establishment of an international body to adjudicate or advise on disputes between indigenous peoples living within the borders of a modern State and non-indigenous institutions, including State institutions. It should be recalled that the Special Rapporteur stressed the importance of States' establishing effective national mechanisms for conflict resolution on indigenous issues and noted that, should this be the case, the need for any such international mechanism would be diminished or non-existent.

3. He also made a number of other recommendations in his final report that it may be worth recalling in the light of the discussion envisaged by the Commission relating to the seminar on the treaty study. In paragraph 322, the Special Rapporteur proposed the establishment of a section within the United Nations Treaty Registry with the responsibility for locating, compiling, registering, numbering and publishing all treaties concluded between indigenous peoples and States. He also suggested two additional themes for workshops: on modalities for redressing the effects of the historical process of land dispossession suffered by indigenous peoples; and the implementation/observance of indigenous treaty rights.

4. The Special Rapporteur also recommended that discussion be promoted around the idea of an advisory body that could serve as an impartial facilitator in cases of disputes on treaty-related matters involving indigenous peoples and States. This, as was stated in his report, would provide advice in situations where no suitable national mechanisms existed.

5. At the time he concluded the final report, the Special Rapporteur suggested that the Permanent Forum on Indigenous Issues, then under consideration by the Commission, might serve as such a body. The Economic and Social Council has, however, now mandated the Permanent Forum to provide advice to the United Nations system, through the Council, and the new body has not been mandated to exercise any advisory role vis-à-vis States.

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[a] To allow time for consultation, the Special Rapporteur submitted his report after the deadline established by the Documents Management Section.

6. The Special Rapporteur wishes to underline that in proposing an open discussion on such an advisory body, he is thinking of a mechanism that would help States and indigenous peoples reach agreement. Hence the proposal that the United Nations create a repository of relevant treaties, agreements and other constructive arrangements, including contemporary agreements, that would be available as a database and provide, in certain cases, examples of good practice resulting in the effective promotion, materialization and protection of indigenous rights.

7. The Sub-Commission invited the Special Rapporteur to identify the themes and outputs of a seminar on treaties and he would propose the following four areas for discussion:

(a) Exploring the possibility of undertaking (by another member of the Working Group on Indigenous Populations) of a new study on the issue of treaty-based relations between States and indigenous peoples. This new study could be based on new available information provided by governmental and indigenous experts on current treaty-making practices and focused on the analysis of the actual present-day utility of such treaties/agreements for the promotion and protection of the human rights of indigenous peoples, as well as on possible ways and means of securing effective participation by indigenous representatives in the treaty-making process and in the implementation of the instruments agreed to in such a process;

(b) Full consideration of possible confidence-building steps to be taken by both indigenous and non-indigenous interested parties facing situations of potential or actual conflict between those two segments of the population in "multiple" societies;

(c) A review on ways and means of achieving the eventual implementation of other recommendations contained in the final report, including the proposal to establish an advisory body and a United Nations repository for indigenous/State treaties; and

(d) Preliminary consideration of other activities that may contribute to establishing harmonious relations between indigenous peoples and States through effective mechanisms for the implementation of the historical and present-day treaty rights of indigenous peoples, as well as of their other rights - including their human rights - recognized in applicable international standards and/or legally binding instruments, as well as in national legislation.